

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

**RIN 3133-AD30**

**General Lending Maturity Limit and Other Financial Services**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is amending its rules to implement amendments to the Federal Credit Union Act (FCU Act) made by the Financial Services Regulatory Relief Act of 2006 (Reg Relief Act). The final rule revises the maturity limit in the general lending rule and permits federal credit unions to provide certain, limited financial services to nonmembers within their fields of membership.

**DATES:** This final rule is effective March 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Moissette Green, Staff Attorney,  
Office of General Counsel, at the above address or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

In October 2006, Congress enacted the Reg Relief Act, which amended the general lending maturity limit for federal credit unions (FCUs) from 12 years to 15 years in §107(5) of the FCU Act as well as §107(12) of the FCU Act to permit FCUs to provide certain financial services to persons within their fields of membership. Pub. L. 109-351, §§502-503, 120 Stat. 1966 (2006). On October 19, 2006, the NCUA Board issued an interim final rule to implement these provisions of the Reg Relief Act. 71 FR 62875 (October 27, 2006). Even though the provisions of the interim final rule became effective on October 27, 2006, the Board issued the interim final rule with a 60-day comment period.

**B. The Final Rule**

NCUA received eight comments on the interim final rule from federal credit unions and trade associations. All the commenters supported the interim final rule, and some provided additional comments. Two commenters encouraged NCUA to seek a longer maturity limit for loans on investment property. While the NCUA Board generally supports greater flexibility for permissible terms for

investment loans, the suggestion is beyond the scope of NCUA's statutory authority and the interim rulemaking.

Four commenters requested clarification on whether FCUs may charge a fee for selling negotiable checks, travelers checks, money orders, and other similar money transfer instruments under §701.30(a). Two commenters pointed out that §701.30(b) specifically permits FCUs to charge a fee for cashing negotiable or money transfer instruments.

FCUs may charge a fee for “selling” money transfer instruments, and specifically providing that FCUs may charge a fee for “cashing” money transfer instruments does not limit that authority. The Reg Relief Act does not restrict the terms under which an FCU can sell negotiable instruments to a person within its field of membership, and the legislative history does not indicate that Congress intended the provision to have any special meaning. Therefore, the common understanding and meaning of the term “sell” in §503 of the Reg Relief Act and §701.30(a) of the rule apply. Selling, by definition, involves the transfer of goods or rendering services for a price. See, Random House Unabridged Dictionary 1739 (2d ed. 1993). Contrary to selling a money transfer instrument, “cashing” an instrument involves the exchange of the instrument for money in the amount reflected on the face of the instrument, and the term does not necessarily mean a fee for the service is permitted. FCUs have always had authority to cash a check drawn on a member's account regardless of the payee's membership status as

this is a service to the member-drawer; the Reg Relief Act permits FCUs to cash a check payable to a nonmember within their field of membership even if the drawer is not a member. The specific provision in the Reg Relief Act and the rule to charge a fee for this exchange permits FCUs to collect a payment for providing the check cashing service. Additionally, FCUs are not required to charge persons for financial services under section 503 of the Reg Relief Act or the rule, but “may” sell or charge a fee for them.

Three commenters suggested NCUA define the term “electronic funds transfer.” The commenters stated the interim final rule was unclear on whether the term “electronic funds transfer” had the same definition as in Regulation E, 12 CFR part 205, or the term “transmittal of funds” under the anti-money laundering regulations, 31 CFR part 103. The Board believes it is unnecessary to define “electronic funds transfer” in this rule for two reasons. First, the term “electronic funds transfer” is defined in the Electronic Funds Transfer Act and Regulation E. 15 U.S.C. 1693a(6); 12 CFR 205.3. Second, the types of money transfer instruments permissible under §701.30 are not limited to electronic funds transfers. The rule permits an FCU to cash or sell checks, money orders, and other similar money transfer instruments. While the rule does not contain an exhaustive list of permissible money transfer instruments, it specifically includes electronic funds transfers. To the extent FCUs provide money transfer instruments that fall within the definition of electronic funds transfer under Regulation E, they must, of course, comply with Regulation E requirements.

The Board notes that electronic funds transfers under Regulation E are excluded from the definition of “transmittal of funds” in the Department of Treasury’s anti-money laundering regulations. 31 CFR part 103. This definition, however, does not affect FCU authority to provide wire transfers under §701.30. FCUs providing wire transfer services and electronic funds transfers under §701.30 must comply with the applicable requirements of 31 CFR part 103.

Two commenters requested NCUA provide guidance regarding FCU compliance with other statutes and regulations, e.g. the Bank Secrecy Act (Pub. L. 91-508), the Customer Identification Program regulation (31 CFR 103.121), NCUA security rules (12 CFR part 748), financial privacy rules (12 CFR part 716), and so forth. One of these commenters recommended NCUA establish a working group to discuss compliance requirements associated with FCUs providing financial services to nonmembers within their fields of membership. The Board believes additional guidance or a working group is unnecessary because this rule does not create any additional requirements for FCUs than there are for other financial institutions. The Board only cautions FCUs to ensure they comply with all applicable statutory or regulatory requirements if they elect to provide financial services to persons with whom the FCUs may have infrequent or irregular contact.

Finally, one commenter correctly noted the interim final rule failed to make a conforming change to the 12-year maturity limit in the current rule regarding due-on-sale clauses. 12 CFR 701.21(g)(6)(ii). Accordingly, the final rule revises this reference to reflect the change in the general lending maturity limit to 15 years.

## **REGULATORY PROCEDURES**

### Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule clarifies and improves the available services FCUs may provide to their members and persons within their fields of membership, without imposing any regulatory burden. The final amendments do not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

### Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 et seq.; 5 CFR part 1320.

### Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

### The Treasury and General Government Appropriations Act, 1999 – Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 (SBREFA), provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The

Office of Management and Budget has determined that this final rule is not a major rule for purposes of SBREFA.

## **List of Subjects**

### **12 CFR part 701**

Check, Check cashing, Credit, Credit unions, Electronic funds transfer, Money order, Money transfer.

For the reasons set forth in the preamble, the Board amends 12 CFR part 701 as set forth below.

By the National Credit Union Administration Board on February 15, 2007.

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Mary F. Rupp

Secretary of the Board

Accordingly, the interim rule amending 12 CFR part 701, which was published at 71 FR 62875 on October 27, 2006, is adopted as a final rule with the following change:



## **PART 701 — ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS**

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109-351; 120 Stat. 1966.

2. Amend Section 701.21 by removing “greater than twelve years” in the first sentence and adding in its place “greater than fifteen years” in paragraph (g)(6)(ii).